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COMMISSION ON HUMAN RIGHTS
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Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1993]

THE HUMAN RIGHTS SITUATION IN EAST TIMOR

1. In 1992 the international community expressed its indignation and reprobation concerning the gross and systematic violations of human rights by the Indonesian authorities in East Timor.

2. In March 1992, the Indonesian Government undertook before the Commission on Human Rights to improve respect for human rights in Timor and facilitate access by non-governmental organizations to the Territory. In August 1992, the Sub-Commission on Prevention of Discrimination and Protection of Minorities condemned the violations of human rights in Timor and called on the Indonesian Government to allow NGOs to have access to the Territory.

3. In actual fact, neither the authorities' undertaking nor the Sub-Commission's resolution has had any effect on the repressive attitude of the Indonesian Government towards the Timorese population: the information collected by the International Federation of Human Rights attests to a continuing deterioration of the situation in East Timor. Collective summary executions have again taken place, the list of the disappeared has grown longer and the population's fear has increased. The Church has been placed under close watch. The Indonesian Government did not even hesitate to prosecute persons arrested at the time of the Dili massacre in November 1991, handing down sentences of up to several years in prison under conditions of "confidentiality" that were absolutely incompatible with Indonesia's international commitments with regard to due process.

4. The Indonesian army launched a new offensive in East Timor in August 1992, in the hope of arresting Xanana Gusmao, Chief of the National Council of the Maubara Resistance (C.N.R.M.) who was indeed arrested near Dili in East Timor on 20 November 1991. Xanana Gusmao was immediately placed in solitary confinement, and, with the exception of the military and, at the very beginning, the Indonesian media for brief periods, no one was allowed to see him until 7 December 1991, when the International Red Cross (I.C.R.C.) was finally able to visit him. To date Xanana Gusmao has not even had access to a lawyer, in violation of the rules of criminal procedure in force in Indonesia itself. According to various reports, Xanana Gusmao was beaten, tortured with electric shocks and subjected to severe psychological pressure during interrogation. His emotional state is said to give cause for concern. There were systematic round-ups before and after the arrest of Xanana Gusmao. Members of his family and that of Abillo Raujo, Chief of the External Delegation of Fretilin (Frente Revolucionária de Timor Leste Independente) in Lisbon were arrested. In mid-November 1992, hundreds of persons were rounded up at Dili and in the district of Manaduto. It is estimated that several dozen persons are still being held, cut off from the outside world.

5. The clandestine resistance group FITUN was officially prohibited and its leaders forced to repent publicly. Some of them were arrested, as were other members of clandestine groups. Since the arrest of Xanana Gusmao, at least 20 of the persons closest to him have been arrested, tortured and ill-treated, and one of the detainees, Jorge Manuel Araujo Cerrano, has been tortured to death. Another detainee, still not identified, was hospitalized after being severely tortured in detention: he is said to have had his limbs broken and his fingernails and toenails torn out.

6. FIDH believes that Indonesia is continuing to violate knowingly international instruments for the protection of human rights, and the terms of the Fourth Geneva Convention of 1949, which protects the inhabitants of occupied territories, in particular the provisions of article 31, stipulating that: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties". Moreover, regarding access by non-governmental organizations to the Territory of East Timor, the Indonesian authorities are continuing to violate not only their own undertaking before the Commission on Human Rights at its forty-eighth session, but also the above-mentioned Sub-Commission resolution. Thus several NGOs, including the International Federation of Human Rights,

have been refused access to the Territory despite repeated requests based on both the authorities' undertaking and the Sub-Commission resolution.

7. A resolution adopted by the Executive Bureau of the International Federation of Human Rights on 25 November 1992 requests:

> "(a) The unconditional and immediate release of Xanana Gusmao, and of all of the persons detained solely on the grounds of their participation in the struggle for the liberation of East Timor;
>
> (b) The immediate withdrawal of Indonesian troops from the occupied Territory of East Timor and the organization, under United Nations auspices and as quickly as possible, of a referendum on the self-determination of the Timorese people;
>
> (c) An emergency meeting of the United Nations Security Council to decide, as an interim measure of protection, on the establishment of an international embargo on the sale of weapons to Indonesia, on the basis of article 41 of the Charter of the United Nations;
>
> (d) Authorization to visit East Timor, in accordance with the resolution adopted by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1992."

8. The International Federation of Human Rights (FIDH) requests the Commission on Human Rights to react as energetically as possible to the gross and systematic violations that are continuing to be committed by the Indonesian authorities in East Timor, in complete contradiction with the authorities' undertakings to the Commission and in defiance of the injunctions of the Sub-Commission. In particular, the International Federation of Human Rights calls on the Commission to appoint a special rapporteur to monitor the human rights situation in Timor and to report thereon to the Commission at its fiftieth session and to the General Assembly at its forty-eighth session.

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COMMISSION ON HUMAN RIGHTS
Forty-ninth session
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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1993]

VIOLATIONS OF HUMAN RIGHTS AND RENEWED ACTIVITY BY PARAMILITARY GROUPS IN 1992: THE EXAMPLE OF COLOMBIA

1. In connection with resolution 1992/57 of the Commission on Human Rights entitled "Civil defence forces", the International Federation of Human Rights (IFHR) wishes to draw the attention of the Commission on Human Rights to the direct and immediate link between violations of human rights and the activities of civil defence forces by citing the example of the situation in Colombia, where the year 1992 was marked by a very serious worsening of the human rights situation, together with a renewal of activity by paramilitary groups.

The context: worsening of the human rights situation in 1992

2. The increasing number of violations of human rights and the increasing polarization of the elements contributing to conflict in Colombia (the army, the guerrillas, the paramilitaries), reflected in the Government's 8 November 1992 declaration of a "state of internal disturbance", justify

the view that the country will shortly be reaching a dangerous point-of-no-return. Murders, disappearances and massacres continued during 1992 on an extremely disturbing scale. This violence was characterized, in the first place, by an increase in the number of collective massacres, 485 persons being killed in 96 massacres between January and June 1992. The department of Antioqua holds the dismal record of 32 massacres and 148 deaths. These appalling figures exceed those for 1988, a year in which a great number of collective massacres was recorded.

3. A second feature of these violations of human rights is the political nature of the murders committed. During the period from 1 January to 31 May 1992, 280 political murders were recorded, 30 of which were blamed on the paramilitary groups, the increase in whose activity is examined below.

4. The political movement Esperanza, Paz y Libertad alone, the political arm of the former EPL guerrillas who lay down their arms in 1991, has counted, during the first five months of 1992, 92 members murdered by members of the armed forces, paramilitaries or the police. But it is mainly the Patriotic Union, an opposition party which has regularly put forward candidates in various elections and has achieved undeniable success, that holds the sad record for the number of members murdered: 2,113 since the Union's establishment in 1985. This policy of systematic elimination of the opposition formed by the Patriotic Union, adopted on the initiative of certain elements in the armed forces and paramilitary groups, is exemplified by a massacre which took place at El Castillo (Meta) in June 1992, when the outgoing mayor Maria Mercedes Mendez de García, the new mayor William Ocampo and three municipal officials were killed in an attack by a group of paid killers. The Patriotic Union has indirectly accused members of the 21st "Vargas" Battalion and of the 7th Brigade, stationed in the area, of being responsible for this massacre and has urged the dismissal of Lieutenant Rojas, commanding officer of Mobile Brigade No. 1, which forms part of the 7th Brigade.

A fundamental cause of the worsening of the situation: renewed activity by paramilitary groups in 1992

5. The IFHR considers that the reactivation of the paramilitary groups, for which the Colombian Government is directly responsible, is the fundamental reason for the deterioration of the human rights situation in Colombia. Paramilitary activities have always been one of the causes of violence in the country. The areas in which they have taken place have varied in recent years, but they have never totally stopped and during 1992, they became more frequent.

6. An odd fact, peculiar to Colombia, is that paramilitary activity formerly had a legal basis. It is to be feared that it will now find such a basis once again, but in other forms. In this connection we would recall the notorious Act No. 48 of 1968 which authorized the army to organize and train so-called civilian "self-defence" units. This Act remained in force until April 1989, facilitating throughout this entire period the raising of powerful paramilitary organizations which engaged in "legal" hunting of political opponents and guerrilla units both by night and by day. These groups were

rapidly infiltrated and even controlled and financed by the drug mafia and constituted a "natural" milieu for corruption of the armed forces by the mafia.

7. Despite the sometimes praiseworthy efforts made to break up these organizations, most of them survived the notorious "total war" declared in August 1989 between the Government of President Barco and the Medelin cartel. After the election of President Gaviria in 1990, the policy of "submission to justice" offered to the traffickers, followed by renewal of the peace dialogue with the guerillas, led certain paramilitary groups to lay down their arms. There was, it is true, a slight decline in paramilitary activity in 1991, but the paramilitary groups became active again in 1992. In the Santander area, for example there has been a virtual takeover by these groups and many studies have shown that the inhabitants are left with no choice: they must either participate in the paramilitary activities or go into exile. The paramilitary phenomenon is therefore thriving again throughout the country and is particularly concentrated in such areas of insurgency as Meta, Magdalena and Uraba Antioqueno. The situation regarding the responsibility of the State for the continuation of these paramilitary activities is quite clear. The State is, in fact, noticeable by its absence and is thus allowing veritable "no go" areas to be created, by no means as a result of chance. It is undeniable that there are old and powerful organic links between the army and the paramilitary groups. The persistence of these links and the impunity enjoyed by the military personnel directly implicated in the massacres are interpreted by the IFHR as signifying actual tacit approval by the armed forces.

8. The activity of these paramilitary groups demonstrates, at the very least, the inability of the State, not only to maintain public order, but also to plan a return to the rule of law in the region. Worse still, the Government's attitude to paramilitarism is showing a disturbing trend: whereas in the past there was some condemnation of paramilitarism, there are now unconvincing denials of the existence of this problem. Worth mentioning, in this connection, is the meeting held in late August between the Minister of Defence, senior generals of the army and the police and the heads of major enterprises to discuss the placing of security militia units in the enterprises. The idea was in fact to set up within enterprises, in collaboration with and under the control of the army, private militias to protect the enterprises and their management against the risk of attacks, abductions and extortion. Such arrangements continued on a completely official basis from 1968 until 1989 and it is this that allowed the development of many paramilitary groups, in the Magdalena Medio area in particular. This greatly facilitated the organization of such groups and led to the murder of dozens of trade union members and leaders. There is reason to be concerned at the statement by President Gaviria himself, in a speech to the Association of Industrialists (ANDI), in which he praised "private justice", saying that "the support of honest Colombians who wished, in their own interest, to help the authorities in their battle against offenders and organized crime" would be most effective if private individuals were to assume responsibility for their own security. This statement by President Gaviria was in fact an encouragement to set up private militias and local paramilitary groups.

9. There has, in fact been an increase in the activities of the paramilitary groups. According to the Colombian organizations for the defence of human rights, 5,774 Colombians are now threatened with death. The massacre of whole villages has been promised in the "sufragios" (death notices) sent out by local paramilitary groups in such areas of army-guerilla confrontation as Ariari, Duda and Sumapaz.

Cause and effect of the worsening of the human rights situation: impunity enjoyed by those who permit exactions

10. Finally, the impunity enjoyed by those who commit these violations of human rights is serving to aggravate the situation in Colombia, even though in some rare instances certain guilty persons have been tried and convicted by the Colombian courts. The impunity of State officials, in particular, has been publicly denounced by the Procurator for Human Rights, who - in a report submitted on 9 September 1992 - noted that in 1991 his office had recorded 566 complaints concerning disappearances and 305 cases of torture. Members of the National Police were directly implicated in 63 of the disappearances, members of the armed forces in 68 and Administrative Security Department (DAS) agents in 3. One hundred and six members of the police force, 9 of the DAS, 98 members of the armed forces and 10 other State officials were implicated in cases of torture. The People's Defender's report to the Government, which was prepared at the request of the Congress, lists 830 cases of murder committed during the election campaign, most of the victims being members of the Patriotic Union or the Esperanza Paz y Libertad movement who were being officially investigated. Only 10 of these offenders came before the courts and in 6 cases the result was acquittal of the accused. Yet according to the official report the paramilitary groups bear primary responsibility for these crimes and after them come employees of the State (army and police personnel). Even more specifically, in the case of the murders of important opposition leaders, such as Jaime Pardo Leal in October 1987, the report deplores "the unpublicized but obvious pressure" on the courts. This impunity, which has long being denounced by all the organizations for the defence of human rights, is a major scandal in Colombia and one of the primary causes of violations of human rights.

11. The International Federation for Human Rights therefore requests the Commission on Human Rights to examine this situation very closely when it considers the report of the Secretary-General under Commission resolution 1992/57.

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COMMISSION ON HUMAN RIGHTS
Forty-ninth session
Agenda item 10 (a)

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1993]

TORTURE IN EGYPT

1. The International Federation of Leagues of Human Rights (IFHR) and its affiliate, the Egyptian Organisation for Human Rights (EOHR), are extremely concerned by the persistence of the constant use of torture by law enforcement officers in Egypt, and wish to draw to the attention of the Commission on Human Rights, EOHR's conclusions on this problem after several years of an important campaign against torture.

2. In spite of the fact that Egyptian law and the Constitution prohibit torture, police and security bodies in the country persist in resorting to it.

3. Also, in spite of the fact that Egypt was the first Arab country to ratify in 1986 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture which had been reintroduced to the country five years before the ratification of the Convention by the Egyptian Government has continued unabated since then.

4. During the past three years, EOHR issued four reports on torture in Egypt. The first, issued in January 1990, dealt with torture in the central and local headquarters of the State Security Intelligence Police. A second report, in November 1990, dealt with torture in police stations. The third report, in August 1991, dealt with torture in a number of Egyptian prisons. The fourth report, in December 1992, dealt with torture in Central Security Forces Camps.

5. EOHR has addressed all the concerned authorities in Egypt, informing them of each torture case of which it had received information. Regretfully, it received not a single reply.

6. EOHR has, furthermore, submitted numerous formal complaints of torture cases to the Public Prosecutor and to local prosecution bodies. Again, we have to regretfully report that these complaints received scant attention and were without results. This occurred in cases in which immediate action was required so that forensic medical examiners could be assigned to examine the torture victims before the forensic evidence of the crime committed against them was given time to disappear. It may be said in effect, that torture has become an unpunishable offence in Egypt.

7. In this regard, the EOHR points out that while the way to investigate complaints of torture in police stations seems open, although slow, the way to investigate allegations of torture in places under the authority of State Security Police Intelligence (SSPI) seems completely closed. In this case indeed, a decision must be taken to suspend the immunity which those bodies enjoy against the Constitution, the law and the Prosecutor General.

8. EOHR also regrets to report that torture has become routine police procedure carried out by ordinary police officers in police stations as well as by officers of the State Security Intelligence Police at its diverse headquarters in Cairo and the provinces. Camps of the Anti-riot Central Security Forces have also been used as torture centres. Torture is administered with the aim of extracting confessions or as punishment of political opponents and suspects.

9. Torture was restored to Egypt in the wake of the assassination of former President Anwar Sadat in 1981 and in conjunction with the phenomenon of violence committed by some political Islamist groups. Persons suspected of belonging to Islamist groups have accounted for the bulk of torture victims during the past decade. While condemning the acts of violence committed by some political groups, EOHR totally rejects any use of this violence as justification for torture either of persons suspected of committing acts of violence or of any others.

10. Torture has not been limited however to suspected Islamist activists. It has come to include among its victims persons suspected of belonging to Nasserist and Communist organizations, Christians accused of enticing Muslims to convert and Muslims accused of converting to Christianity. Torture victims have also counted among their number three members of the EOHR Board of Trustees and other members of the organization. During the past decade, torture victims have included journalists, lawyers, workers, doctors, engineers and university and school students. Numbers of Palestinian residents and visitors have also been among the victims of torture in Egypt.

11. Alongside the above cases of torture involving political cases, scores of Egyptian citizens are exposed on a daily basis to torture and inhuman or degrading treatment in hundreds of police stations around the country, where torture and mistreatment have become routine police procedure in the investigation of ordinary crimes and the interrogation of suspects.

12. Methods of torture include the stubbing of burning cigarette ends into the bodies of the victims, beating with whips, leather straps as well as with solid objects, hanging in extremely awkward positions for long durations resulting occasionally in temporary of permanent paralysis, and the application of electric shocks to the genitals and to other sensitive parts of the body. Torture is normally accompanied by other forms of abuse and mental torture including severe verbal abuse and threats to kill the victim, rape him or his wife or women kinsfolk.

13. Recent information received by EOHR indicates that victims may have been sexually abused both through the use of solid objects and later through rape by one of their torturers.

14. EOHR is of the view that torture is an officially sanctioned policy in Egypt, particularly towards certain political opposition groups. In support of this conclusion is the fact that the restoration of torture took place in a political situation (the assassination of President Sadat). Certain torture implements such as those used for the administration of electric shock torture cannot be imported without Government knowledge. The central headquarters of the State Security Intelligence Police, one of the worst torture centres in the country, is in Lazoughly in Cairo directly adjacent to the Ministry of the Interior building.

15. To continue to deny the occurrence of torture convinces no one, serving only to reassure those responsible for the torture and hence to encourage its use without fear.

16. EOHR put forward the following demands to the authorities:

(a) To ban torture and instruments of torture at all places of detention (SSIP headquarters, police stations, prisons, police departments, CSF camps, etc.).

(b) To decide on all torture complaints submitted to the prosecution bodies in the past years.

(c) To initiate legal criminal proceedings against persons responsible for torture.

17. The International Federation of Leagues of Human Rights calls upon the Commission on Human Rights to consider carefully the conclusions of its affiliate, the Egyptian Organisation for Human Rights, and to take all appropriate measures that could help eradicate torture in Egypt. Finally, IFHR respectfully requests the Special Rapporteur on the question of torture to focus on the situation of torture in Egypt.

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COMMISSION ON HUMAN RIGHTS
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Item 10 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[4 February 1993]

THE ADMINISTRATION OF JUSTICE IN THE PEOPLE'S REPUBLIC OF CHINA

1. Further to the information contained, in particular, in the report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the independence of the judiciary and the protection of lawyers (E/CN.4/Sub.2/1992/25, paras. 137-141 and 146-151), the International Federation of Human Rights (FIDH) draws the attention of the Commission on Human Rights to the fact that, according to its information, there have been no noticeable changes in the system of justice in China, the organization and functioning of which remain in flagrant contravention of international standards.

2. Thus the independence of the judiciary, although affirmed in the Constitution, is contradicted both in statutory instruments and in practice.

A. Appointment and powers of judges and procurators

3. Judges and procurators are appointed by the Party, whose guidelines they must apply. Although the Ministry of Justice indicated in November 1991 that a reform of the regulations on the judiciary was being planned, it has to be acknowledged that no reform has materialized.

4. The role of the Government Procurator's Office: the Government procurators, responsible by law for supervising police operations and ordering prosecutions, are in no position whatsoever to exercise control over the all-powerful Department of Public Security, which continues to operate with no supervision by the judiciary. There is no specific law defining the procurators' powers in this area, and they therefore remain without effect.

5. The procurators themselves acknowledge the inadequacy, or indeed lack of control over the Department of Public Security and the detention camps. This situation was confirmed in the 4 October 1991 issue of the Department of Public Security Gazette, which concluded that the procurators lacked control over the Department, owing in particular to their workload.

6. Since the entire police and judicial process is based on confession, torture in places of detention is a widespread and recognized practice, as the Department Gazette reports in its editions dated July to December 1991. Under these circumstances, the fate of persons arrested by the Department of Public Security, in particular as part of anti-crime campaigns directed against groups of so-called hooligans, is a matter of the gravest concern.

7. In addition, political arrests and detentions of opponents or supposed opponents of the regime are continuing, and they must once again be condemned. The following for example, are the names of some of the people arrested last June, all of whom are members of democratic movements. Most are students or teachers at the University of Lanzhou:

Gao Changyun	aged 28
Lu Yangua	aged 22
Xing Shimin	aged 22
Ding Mao	aged 25
Liu Baiyu	aged 25
Liu Wensheng	aged 24
Zhang Jian	aged 25
Xu Zhrndong	aged 25
Lu Yarin	aged 24
Cao Jianyu	

8. Other persons suspected of belonging to the "Social and Democratic Party of China" or the "Free Labour Union of China" were arrested in Peking during the same period. Their families have been kept in the dark about their fate. No information has been given on their place of detention or the charges against them.

B. Rights of the defence

9. The rights of the defence cannot be exercised freely: lawyers are under the control of the administration, which issues them a permit that has to be renewed each year. Their duties make contradictory demands on them: on the one hand, they are responsible for ensuring the application of laws and regulations which they cannot criticize in any way at the hearing, and, on the other, they are required to defend the accused.

10. A reform of the legal profession was announced in November 1991. The few authorizations (12) granted to international law firms, cannot mask the fact that the system continues to be organized in the same way, unchecked by any reform.

11. Solitary confinement is the usual practice during the period between arrest and trial. Only selected hearings and convictions are made public. Lawyers are not given access to their clients' files until a very short time before the hearing, a situation which they themselves have officially criticized.

C. The prison system and administrative detention

12. A distinction must be drawn between prisons under the control of the prison authorities and administrative detention centres. Complete secrecy surrounds the functioning of all of these establishments, which no humanitarian organizations have been authorized to visit despite repeated offers by several of them, including FIDH, to examine with the Chinese authorities, ways in which this might be arranged.

13. Official information as to the names of these camps, their activities and the people they contain is constantly changing and lacks all credibility. The Department of Public Security has authority over all the administrative detention camps, which can be subdivided as follows:

(a) Camps for re-education through work (laojiao);

(b) Centres for placement under protection pending inquiries (shourong shencha);

(c) Centres for administrative detention for breaches of public order (juliusuo kanshousuo);

(d) Administrative detention centres for minors under 16 years of age.

14. Several thousand persons have been placed in the administrative detention centres for breaches of public order, in particular after the 1989 events, for periods of up to two years or more, without being officially charged or even arrested. Wide use is made of this form of administrative detention. The numerous individuals of whom there has been no news are probably being held in these centres. According to consistent reports, judges with little or no training, recruited on a discretionary basis, subject to the influence of the Party and the Department of Public Security, lawyers who are unable to practise their profession freely, police services which act with no judicial control and torture and ill-treat people with impunity and administrative detention centres and prisons shrouded in secrecy characterize the administration of justice and the police force, the organization and functioning of which are in flagrant contradiction with international standards.

15. Once again, the International Federation of Human Rights calls on the Commission on Human Rights to give its opinion concerning this situation.

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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Written statement submitted by the American Association of Jurists, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[4 February 1993]

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Economic and Social Council resolution 1992/6 of 20 July 1992 authorized the establishment of a working group to elaborate a draft protocol.

Brief analysis of the basic elements of the draft

(a) Prevention and confidentiality mean effective protection

The draft goes further than existing mechanisms, in that States will undertake to authorize visits unconditionally and without reservation. The subcommittee established under the protocol (see arts. 2 to 7 of the draft) performs a preventive function. Its task is to carry out fact-finding missions and, in a spirit of cooperation (see also art. 3 of the draft) to

make recommendations for improving, if necessary, the protection of persons deprived of their liberty. Any such recommendations should be taken as a starting point for a dialogue leading to concrete measures.

Confidentiality is ensured throughout the mission. The subcommittee's recommendations, consultations and report (see art. 14 of the draft) will remain strictly confidential. No levelling of accusations or public criticism. The only exception would be if the State Party has failed to cooperate or refused to improve the situation, in which case the Committee against Torture (CAT) may, at the request of the subcommittee, decide to make a public statement or to publish the report (see art. 14, para. 2, of the draft). Such publication in the form of a sanction should serve to strengthen the spirit of cooperation underlying the protocol, without really creating an obstacle to ratification.

(b) Places of detention to be visited

Article 1 of the draft calls on every State Party "to permit visits ... to any place under its jurisdiction where persons deprived of their liberty by a public authority or at its instigation or with its consent or acquiescence are or may be held". The protocol is therefore applicable, for example, in places where persons are held in temporary detention, imprisoned after being found guilty of an offence, placed in administrative detention or confined for medical reasons, or to places where minors are detained by a public authority. It also applies to detention by military authorities.

The protocol applies only to persons detained by "a public authority" for the following reasons: under international law, State responsibility covers such situations only; the special case of insurrectional movements is in any event covered by the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II) of 8 June 1977; a process of dialogue such as that established, for the purpose of prevention, by the protocol could not be initiated without the "participation" of a public authority; finally, this provision of the draft would otherwise be too broad (it would cover, for example, any confinement of one individual by another) and would thus impose unlimited obligations on States (authorizing preventive visits even to private premises such as dwellings), and consequently would have a very low success rate and inevitably have to be amended.

The addition of the words "or at its instigation or with its consent or acquiescence" is justified by the situation of "disappeared" persons. Article 12, paragraph 2 (d), complements article 1, paragraph 1, in fine of the draft by establishing the obligation of the State party to provide assistance if the subcommittee or one of its delegations wishes to visit locations other than those selected by the public authorities (see art. 12, paras. 2 (b) and (c), of the draft). It was felt necessary to insert such a provision to enable the subcommittee to visit places where "disappeared" persons might be held.

Under article 12, paragraph 2 (e), of the draft, it is also possible to demand the production of "any person deprived of his liberty whom the delegation wishes to interview, at the request of the delegation and at a convenient location, i.e. if necessary outside the place of detention (this wording has also been inserted to enable States having secret places of detention still to ratify the protocol)". The concept underlying this paragraph is similar to that of habeas corpus or amparo. The main merit of this article is that it to some extent makes derogation from the above judicial guarantees impossible. They still belong to the category of rights that can be suspended when a state of emergency is proclaimed. The prohibition of torture, on the other hand, is a right which cannot be overridden and which must be observed under all circumstances. The effect of including a guarantee similar to that of habeas corpus or amparo in an additional protocol to a convention against torture is to render such guarantees indefeasible.

The draft protocol therefore not only forms part of the efforts currently being made by the United Nations to prevent enforced disappearances, but also is in keeping with the international community's expressed wish to have the rights of habeas corpus or amparo declared "an inalienable right".

The organization of a mission also is governed by article 12 of the draft. Before being authorized to visit at any time, the subcommittee must notify the Government concerned of its intention (see art. 12, para. 1, of the draft). This paragraph does not stipulate the interval which must elapse between notification and the time when the mission is carried out. A number of interests are involved. The subcommittee should allow the State concerned time to take the necessary measures (see art. 12, para. 2, of the draft) in order to make the mission as productive as possible (a specific application of the principle of cooperation as expressed in article 3 of the draft), but without enabling it to correct certain violations (with the passage of time, the marks left by any acts of torture disappear, places of detention can be cleaned up, prisoners transferred, etc.); nor should States be under semi-permanent notification and, if the situation so requires, the mission may be carried out immediately after notification. A proper balance should be found for each specific case.

Under article 13 of the draft, the State may, in the context of a mission and in very specific circumstances, postpone a visit or limit the subcommittee's right of access to a given place.

Article 12, paragraph 3, calls for very special attention. It stipulates that members of the delegation may interview any person deprived of his liberty in private, inside or outside his place of detention, without witnesses and for the time they deem necessary. They may also communicate without restriction with the relatives, friends, lawyers and doctors of persons who are, or have been, deprived of their liberty and with any other person or organization that they think may be able to provide them with relevant information. It is understood that this list is not exhaustive. Such persons are not obliged to agree to communicate with the subcommittee; nevertheless, the subcommittee must be able to ascertain that such is their wish. Article 12, paragraph 4, protects witnesses, "victims" and any other

cooperating person or organization from any sanction. Regrettably, the wording of this provision leaves something to be desired: a more specific reference to article 12, paragraph 3, would be advisable.

Article 14 of the draft concerns the preparation of a report by the subcommittee at the end of each mission. Thereupon, a dialogue is established with the State concerned with a view to cooperating in bringing about improvements in the protection of persons deprived of their liberty.

Article 15 of the draft stipulates that CAT will examine the reports and recommendations resulting from the various missions, while observing their confidentiality, subject to article 14, paragraphs 2 and 3, of the draft, and the general annual report prepared by the subcommittee on the implementation of the protocol.

The system of visits and its implementation therefore appear to be very well regulated.

(d) Risk of overlapping with other systems of visits?

The additional protocol deals cleverly with the risk of overlap with other systems of visits.

Article 8, paragraph 2, of the draft provides that the subcommittee shall postpone its mission if CAT is to carry out a visit under article 20, paragraph 3, of the Convention against Torture.

Article 9, paragraph 1, of the draft prevents the subcommittee from sending missions to countries which have ratified a regional convention providing for a system of visits (the European Convention for the prevention of torture is as yet the only concrete example). Cooperation is possible.

Article 9, paragraph 2, *in fine* provides for the activities of the subcommittee and ICRC in a given country in peacetime.

Cooperation and coordination, then, to avoid any situation which may place too many demands on States and to obtain the maximum number of accessions without sacrificing the effectiveness of prevention and protection.

Conclusion: the expression of a hope

The draft optional protocol to the Convention against Torture meets the need to monitor States' observance of their obligations regarding torture and inhuman or degrading treatment but, above all, applies the most advanced and effective monitoring system to those obligations. The existence of an international body of universal character to inspect places within the jurisdiction of States has much more far-reaching significance than a system based on the consideration of information submitted by the States themselves or the consideration of individual complaints. This system also has the advantage of providing not only a more effective method of ascertaining

whether a State is honouring its international obligations, but also a method of preventing, in a spirit of cooperation with States, any violations before they occur, or at least before they occur on a large scale. It is therefore consistent with the new approach to ensuring the protection of human rights.

The American Association of Jurists stresses the need to adopt the draft protocol rapidly so that the international community can begin to work actively on effective prevention and expresses the hope that this study may help to allay any misgivings.

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COMMISSION ON HUMAN RIGHTS
Forty-ninth session
Agenda item 20

RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Written statement submitted by the Inter-Parliamentary Union, a non-governmental organization in consultative status (category I)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 January 1993]

GE.93-10479

RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

1. One hundred and eighteen National Parliaments are currently represented within the Inter-Parliamentary Union which also has one associate member.

2. In April 1992, the 87th Inter-Parliamentary Conference adopted unanimously[1] a resolution entitled: **The Organization and Functioning of Democracy and the Expression of Ethnic Diversity as a means of ensuring the Stability of all States, Economic Development and better use of the Peace Dividend for the benefit of the Third World.** The members of the Commission on Human Rights will find below, for their information, the text of this resolution.

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1 The following national Parliaments were represented at this Conference: Angola, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Cameroon, Canada, Cape Verde, Central African Republic, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Denmark, Djibouti, Ecuador, Egypt, Equatorial Guinea, Finland, France, Gabon, Germany, Greece, Guatemala, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Latvia, Lebanon, Liberia, Libyan Arab Jamahiriya, Luxembourg, Malaysia, Mexico, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, San Marino, Senegal, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Togo, Tunisia, Turkey, Uganda, United Kingdom, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe

THE ORGANIZATION AND FUNCTIONING OF DEMOCRACY AND THE EXPRESSION OF ETHNIC DIVERSITY AS A MEANS OF ENSURING THE STABILITY OF ALL STATES, ECONOMIC DEVELOPMENT AND BETTER USE OF THE PEACE DIVIDEND FOR THE BENEFIT OF THE THIRD WORLD

The 87th Inter-Parliamentary Conference,

Recalling the United Nations Charter, the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Economic, Social and Cultural Rights,

Recognizing the International Covenant on Civil and Political Rights, which constitutes the first legally binding international UN treaty in the field of human rights,

Recalling the declarations and resolutions of other international and multilateral bodies reaffirming respect for human rights and fundamental freedoms,

Reaffirming that all Governments have an obligation to promote and protect the human rights of all, without distinction as to race, caste, colour, sex, language, religion, political or other opinion, national or social origin, property or place of birth,

Recognizing that pluralistic democracy may exist in a variety of forms, is not confined to one particular model, and requires that those governed should participate in government,

Conscious that universal principles and elements of democracy should be followed by all and that it is up to every State to develop its own system in which these basic principles are implemented, in keeping with the nation's sociocultural traditions, values and ideals for the future,

Taking into account that democracy constitutes a prerequisite for sustainable development which allows people to develop their creative energies and contribute to building and furthering their society,

Recognizing that democracy and development are inseparably interrelated,

Bearing in mind the indivisibility and interlinkages of all human rights and fundamental freedoms,

Referring to such basic principles as respect for human rights, rule of law, separation of powers, national sovereignty, pluralism, elections and religious freedom,

Conscious of basic *habeas corpus* guarantees such as the right to life, legal security and the independence of the justice system, protection against arbitrary arrest and the right to a fair trial,

Reaffirming that the effective functioning of democracy requires competence, accountability and respect for the individual on the part of those in government, that it is the right of all people to participate freely in the government of their country, either directly or through freely chosen representatives, and that the basis of the authority of democratic government is the will of the people,

Reaffirming also that civil and political rights can best be observed in an environment of economic and social justice,

Expressing deep concern that throughout the world serious problems are arising from inter-ethnic and inter-group conflicts involving, in particular, persons belonging to national, ethnic, religious or linguistic minorities,

Recalling Article 27 of the International Covenant on Civil and Political Rights, according to which "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language",

Considering that the fundamental principle of non-interference in the domestic affairs of States is not incompatible with the duty of the international community toward human rights treaties and the duty of rendering assistance to oppressed national, ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of these persons contributes to the political, economic and social stability of the States in which they live and to the strengthening of co-operation and friendship among peoples and States,

Recognizing the importance to the stability and economic development of multi-ethnic States of peaceful co-existence between the various communities and the mutual respect for their traditions, languages, religions and practices,

Convinced that only the establishment of democratic systems can bring nations closer together in respect for law and fundamental freedoms, and urging the non-use of force and violence in the settlement of conflicts, be it between or within States, the respect of the rights of persons belonging to national, ethnic, religious or linguistic minorities and the loyalty of such minorities to the State, which contributes to national stability and integrity,

Recalling that for democracy to be maintained in developing countries, it should go hand in hand with sustainable economic and social development so that hunger, illiteracy and abject poverty do not deprive the people of their most basic rights,

Considering the potential dimension of the peace dividend to be reaped by the ending of the Cold War, and the fact that a small percentage of those savings, if passed on, could avert much conflict and unrest in developing countries,

A. With regard to democratic values and mechanisms

1. Calls on all States to take measures to ensure that their political structures are based on the full participation of all citizens, regardless of racial, ethnic, linguistic or religious background, as well as on the principles of individual freedom and basic human rights for all, in order to promote dynamic and harmonious inter-ethnic relations;

2. Condemns all acts of racism, xenophobia and discrimination on grounds of nationality, race, sex or religion, and calls on all Governments to establish effective laws in this regard;

3. Underlines the fundamental role of women in productive processes and the need to enhance their involvement in the decision-making process and eradicate inequalities between men and women;

4. Reminds Governments of the importance of access to the media for the full expression of ethnic, religious or linguistic identity, and calls on them to ensure such access wherever necessary;

5. Emphasizes that the establishment of political freedom, participation by all, respect for human rights and the rule of law are essential for long-term stability and sustainable economic development;

B. With regard to national minorities and ethnic diversity

6. Acknowledges that a universally accepted definition of "minorities" does not exist, and recommends the improvement of standards concerning civil and political rights and the protection of persons belonging to national, ethnic, religious or linguistic minorities;

7. Urges all Governments to ensure that national policies and programmes are planned and implemented with due regard for the legitimate interests of persons belonging to minorities;

8. Calls on all nations to settle disputes and conflicts, particularly those affecting national minorities, by peaceful and non-violent means and in a spirit of mutual respect, in compliance with the Charter of the United Nations and with international law;

9. Calls on all States to protect within their respective territories the existence and the national, ethnic, cultural, religious or linguistic identity of minorities and to create conditions for the promotion of that identity;

10. Calls on Governments and parliamentary assemblies to take steps to protect and promote peaceful co-existence and constructive interaction between the various communities of multi-ethnic societies;

11. Recommends that parliamentarians worldwide welcome information and suggestions provided by non-governmental human rights organizations regarding persons belonging to national, ethnic, religious or linguistic minorities;

C. With regard to international instruments

12. Calls on all States that have not yet done so to accede to and/or ratify the International Covenant on Civil and Political Rights and all other international human rights treaties;

13. Calls for the full implementation of the principles of these treaties;

14. Proposes that the set of instruments available to the United Nations for peace-keeping purposes be expanded and strengthened;

15. Calls for the further development of international mechanisms, such as the establishment of a United Nations Court of Human Rights and a High Commissioner for Human Rights, with a view to strengthening and steadily improving human rights treaties;

D. With regard to the peace dividend

16. Calls for new approaches to peaceful and constructive international co-operation in a period of growing confidence;

17. Calls on the developed countries to reduce spending on arms and redirect resources towards investment in economic development, ensuring that the benefits are distributed fairly amongst the developing countries;

18. Calls on developing countries to freeze military spending and increase social spending on priority areas of human development.

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COMMISSION ON HUMAN RIGHTS
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Item 10 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the Centre Europe-Tiers Monde, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 January 1993]

1. The Centre Europe-Tiers Monde (CETIM) has for several years been closely following developments in the human rights situation of the Kurdish people, especially in Turkey. For this reason CETIM would like to help make more widely known the public statement by the European Committee for the Prevention of Torture (CPT), excerpts from which appear below*.

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* Underlining added.

2. On 21 December 1992, the European Committee for the Prevention of Torture (CPT) decided, for the first time in its history, to make an 11-page public statement on torture in Turkey, which was published in Strasbourg. The CPT reveals the findings of three visits it had made to various places of detention in Turkey:

THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE
DENOUNCES TORTURE IN TURKEY

"(...) At its 14th meeting (28 September to 2 October 1992), the CPT reviewed the measures taken by the Turkish authorities following recommendations made by the Committee in its mission reports. The Committee concluded that the Turkish authorities had continuously failed to improve the situation in the light of its recommendations on (i) the strengthening of legal guarantees against torture and other forms of ill-treatment in police (and gendarmerie) establishments and (ii) the activities of the anti-terrorism divisions of the Ankara and Diyarbakir police departments, and that that failure justified recourse to article 10, paragraph 2, of the Convention. (...)

(...) In the first place, the CPT was struck by the extremely high number of allegations of torture and other forms of ill-treatment by the police which it received during its visit, and by the wide range of individuals who made those allegations. It was also struck by the consistency of the descriptions of specific types of torture and ill-treatment contained in the allegations. It should be noted that the allegations were made by persons suspected or found guilty of violating the anti-terrorism laws and by persons suspected or found guilty of violating the ordinary laws.

Regarding the types of ill-treatment alleged, the following forms were repeatedly described: hanging by the arms; hanging by the wrists, with the wrists attached behind the victim's back (so-called Palestinian hanging; a technique that appears to be used in the anti-terrorism divisions especially); electric shocks to sensitive parts of the body (including the genital organs); squeezing of the testicles; blows to the soles of the feet ('falaka'); spraying with cold water under pressure; detention for prolonged periods in extremely narrow, dark and poorly-ventilated cells; threats of torture or other forms of serious ill-treatment against the person detained or third parties; severe psychological humiliation. 2/

The medical data obtained by the CPT should also be stressed. A significant number of persons examined by doctors forming part of the CPT mission displayed physical injuries or other medical symptoms consistent with their allegations of torture or ill-treatment by the police (...)

2/ The CPT mission found instruments of torture in the Ankara and Diyarbakir police departments.

During its second visit to Turkey, in autumn 1991, the Committee noted that no progress had been made in eliminating torture and ill-treatment by the police. Many persons claimed to have been subjected to such treatment during the 12 preceding months. The types of ill-treatment alleged had hardly changed, except that a growing number of allegations concerned the forcible introduction of a stick or club into body openings. Once more, a number of persons who stated that they had been ill-treated revealed upon examination injuries or other medical symptoms consistent with their allegations. (...)

In its report on its second visit to Turkey, the Committee repeated its earlier recommendations for preventing torture and other forms of ill-treatment. It also recommended that a body of independent persons should immediately be set up to conduct a thorough inquiry into the methods used by the police officers of the anti-terrorism divisions of the Ankara and Diyarbakir police departments when detaining and questioning suspects. In the light of the information collected during the CPT's second visit, it was also emphasized that the inquiry should be extended to include the anti-terrorism division of the Istanbul police department.

One year after transmitting its second report, the Committee took stock of the measures taken by the Turkish authorities concerning all of the recommendations contained in the reports prepared after its two visits. It noted that progress had been made on some points. Some measures, both legal and practical, had been taken in response to the CPT's recommendations on the physical conditions of detention in the police and gendarmerie establishments. The dialogue between the Turkish authorities and the Committee on questions relating to prisons appeared to be beginning to bear fruit. On the other hand, no concrete progress had been made in implementing the major recommendations relating to torture and other forms of ill-treatment in police establishments. (...)

Furthermore, no satisfactory measures had been taken on the CPT's recommendation concerning the anti-terrorism divisions of the Ankara and Diyarbakir police departments. The National Grand Assembly's Commission of Inquiry into Human Rights - which had been entrusted with the task of conducting the inquiry recommended by the Committee - had failed to act swiftly. It was not until 29 June 1992 that the competent subcommittee of the Commission first visited the Ankara police department (a second visit was apparently made on 7 July 1992). Furthermore, at the time of the meetings between the Turkish authorities and a mission of the CPT, which took place in Ankara around the end of September 1992, the subcommittee had still not communicated its findings to the Commission of Inquiry. The subcommittee had also not visited the anti-terrorism division of the Diyarbakir police department (or, for that matter, the anti-terrorism division of the Istanbul police department). In addition, it was obvious from the information given the CPT by a member of the subcommittee that the visits to the Ankara police department had been superficial. It was also clear that the subcommittee had neither the necessary powers nor the required professional competence to conduct the 'inquiry' recommended by the CPT in its second report.

It should be added that information received from representatives of the Ministry of the Interior at the above-mentioned meetings in September 1992 revealed that no credible measures had been taken at the administrative level in response to the CPT's successive recommendations concerning the anti-terrorism divisions of the Ankara and Diyarbakir police departments. The only inquiries begun had been entrusted to the same police units that the Committee had concluded were practising torture. It is therefore not at all surprising that they came to nothing.

In short, nearly two years after the Committee's first visit, very little had been done to strengthen legal guarantees against torture and ill-treatment, and no practical step had been taken to remedy the situation noted by the Committee in the anti-terrorism divisions of the Ankara and Diyarbakir police departments. At the same time, the Committee has continued to receive reports on the practice of torture and other forms of serious ill-treatment in those divisions, and in numerous other police establishments in Turkey. (...)"

3. In the light of the CPT's public statement, CETIM notes that Turkey is failing to comply with the various provisions of international human rights law which it has undertaken to uphold. By becoming a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Turkey took on legal obligations by which it must abide.

4. In the spirit of the CPT's public statement, CETIM recommends that the Commission on Human Rights should make every effort to ensure that Turkey firmly undertakes:

(i) to take effective measures to put an end to the practice of torture and ill-treatment in police establishments and prisons;

(ii) to implement the international human rights conventions and treaties ratified by the Government, in particular the European Convention on Human Rights, throughout the national territory.

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COMMISSION ON HUMAN RIGHTS
Forty-ninth session
Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES

Written statement submitted by the International Federation of ACAT (Action of Christians for the Abolition of Torture), a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 January 1993]

INCREASE IN THE USE OF TORTURE TO TERRORIZE THE POPULATION AND TO PREVENT THE ESTABLISHMENT OF A SOCIETY RUN ON DEMOCRATIC LINES

1. The International Federation of ACAT (Action of Christians for the Abolition of Torture) (IFACAT) through its 21 affiliated associations and groups in the process of formation, made representations to the authorities of 100 States in 1992 to denounce the systematic use of torture. The IFACAT observes that the practice of torture makes it possible to maintain a population in the grip of terror and to reject the establishment or restoration of democratic social life.

2. In this statement, the IFACAT draws attention to the following five situations:

A. Haiti

Torture, summary executions and disappearances are on the increase. The authorities, who took power in an irregular manner, fail to react. The perpetrators of this exactions go unpunished. The associations affiliated to IFACAT had to intervene on 89 occasions in 1992 in respect of arbitrary arrest (5,096 arbitrary arrests since September 1991), detention incommunicado, abduction, harassment and assault (2,171 persons injured by armed groups, extrajudicial execution (more than 1,870 executions). The climate of terror brought about or tolerated by the de facto authorities, is intended to paralyse the population which is calling for a return to legal and democratic methods.

B. Syria

Thousands of opponents of the Government are in detention, the majority since 1970, without charge or trial. Most have been or are tortured. For example, Dr. Nour Al Din Al Atassi, a surgeon, born in 1929, was arrested n November 1970. In April 1992, Dr. Atassi suffered a heart attack; he was refused permission to go abroad for treatment and this prohibition was lifted only at the last moment. Dr. Atassi died on 3 December 1992.

C. Turkey

The IFACAT had to intervene more than 93 times in the case of thousands of persons tortured or arbitrarily arrested and victims of extrajudicial execution or abduction. The IFACAT is informed of the exactions committed by the Kurdish Workers' Party (PKK) and has condemned them repeatedly. The IFACAT points out that the new Turkish Government has not kept the promise made a year ago to improve the human rights situation in Turkey. An unprecedented number of political murders, frequently committed with the participation of the security forces, are reported almost every day and the use of torture still appears to be just as prevalent.

D. Togo

Against the background of the serious difficulties encountered by Togo in its progress towards democracy, the increase in the number of violations of article 5 of the Universal Declaration of Human Rights of 1948 is creating a climate that seeks to terrorize the population into renouncing its democratic claims. The many examples which the IFACAT can cite include the arbitrary arrests of Corporal Nikabou-Bikagni, Mr. Godjin, relatives of Mr. Nikabou and the gendarme Akpossogna Yao. A large number of residences belonging to opponents of the President of the Republic as well as other buildings were attacked with plastic explosives. More than 100 people were summarily executed in the course of popular gatherings, "police checks", religious ceremonies, repression carried out against unarmed demonstrators between September and December 1992. Detailed information points to the systematic use of torture. The principals of these exactions are unpunished.

E. Peru

The forty-fourth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted, without a vote, resolution 1992/12 calling upon the Peruvian authorities to reopen the dialogue with representative political forces until institutional normalization is restored, human rights are fully respected and representative democracy is completely re-established. The promulgation of Decree-Law No. 25 475, of 7 May 1992, confers increased power on the police to hold any prisoner in custody, "incommunicado" and without the right to the assistance of a lawyer. Decree-Law No. 25 659, of 14 August 1992, suspends habeas corpus for the entire period of investigation by the police and the judiciary. It authorizes the military system of justice to try civilians charged with treason. Decree-Law No. 25 564, of 21 June 1992, declares that the minimum age for criminal liability in the case of terrorism is 15, and that the maximum penalty incurred may be life imprisonment. Although the Peruvian Government, by the elections of 22 November, moved forward along the road to "institutional normalization", the situation continues to give rise to serious concern.

3. For this reason, the IFACAT requests the Commission on Human Rights to appoint a special rapporteur on Peru. The IFACAT requests the Commission to take effective measures to bring to an end the serious infringements of the total ban on torture in these countries.

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COMMISSION ON HUMAN RIGHTS
Forty-ninth session
Agenda items 8 and 9

QUESTION OF THE REALIZATION OF THE RIGHT TO DEVELOPMENT

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted jointly by the Women's International League for Peace and Freedom and the Union of Arab Jurists, non-governmental organizations in consultative status (category II) and the Indian Council of South America, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 December 1992]

Promotion of the right of free self-determination of peoples

1. For more than 30 years the world has been contemplating with a certain indifference the economic, commercial and financial blockade imposed by the United States of America on the Republic of Cuba. In the course of these three decades, the blockade has become an international problem for the third world, one which concerns all of us, and particularly the peoples and nations of the American continent. For that reason the international community ought not, in peacetime and after the political changes that have occurred in the world, let a Power seek to impose its will on the Government of a small country, humiliating its people and condemning them to a state of dire need, in violation of the elementary principles of international law and in disregard of the provisions of the Universal Declaration of Human Rights.

2. Against a background of international relations marked by tension and conflict in different parts of the world and by such a gloomy outlook for the peoples of developing countries, certain events have recently occurred which offer some hope of a just and equitable solution to the problem of Cuba's isolation. Thus the most advanced sectors of international public opinion welcomed with satisfaction resolution 47/19 adopted by the United Nations General Assembly on 18 November 1992, in which it calls upon all States to refrain from promulgating and applying laws and measures whose extraterritorial effects affect the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction and the freedom of international trade and navigation, measures which are incompatible with the Charter of the United Nations and international law. The implementation of that resolution will undoubtedly mark a turning-point in the settlement of one of the most controversial disputes of our time.

3. This is not the first time that the United Nations has given particular attention to non-interference in the internal affairs of States, whether large or small. In resolution 44/215, dated 22 December 1989, the General Assembly deplored economic measures as a means of exerting, directly or indirectly, political and economic coercion on the sovereign decisions of developing countries, and accordingly called upon the developed countries to refrain from exercising political coercion through the application of economic instruments with the purpose of inducing changes in the economic or social systems of those countries.

4. It is also worth remembering that the United Nations General Assembly, in resolution 44/217 of 22 December 1989, unreservedly condemned, as contrary to the principles of modern international law, the use of economic pressure by a country, in particular financial and trade embargo measures, by means of coercion and the use of force with aggressive implications intended to impose changes in the internal and external policy of another country.

5. In addition, over 20 years ago, General Assembly resolution 2625 (XXV), adopted on 24 October 1970, reaffirmed the sovereign equality of States, by virtue of which no State may apply or encourage the use of measures of an economic, political or any other nature to coerce another State in order to induce it to subordinate the exercise of its sovereign rights and obtain from it advantages of any kind that go against its national interests.

6. In the light of this succession of resolutions and recommendations adopted by the highest organ of the United Nations, we are concerned to note how far the economic, commercial and financial blockade imposed by the Government of the United States of America on the Republic of Cuba for the past 32 years in practice violates the principles of the Charter of the United Nations, the rules of international law, particularly the provisions of the General Agreement on Tariffs and Trade (GATT), and the Charter of Economic Rights and Duties of States and that it accordingly constitutes a serious infringement of the inalienable imprescriptible and indivisible right to political and social self-determination of peoples and nations - the fundamental principle of the rule of law - by virtue of which every people, large or small, is entitled to determine its economic and social system and its political and legal institutions, that is, to decide its own destiny freely.

7. Running counter to all these unquestionable legal instruments and the universally recognized rules we have just cited, the total blockade of Cuba is an inhuman act, whose perverse effects are reflected in the enormous difficulties encountered by that Caribbean country, particularly in the shortage and lack of medicines, power resources, raw materials, spare parts and other basic requirements for the production of consumer goods and services, depriving the Cuban people of articles which are essential for their diet, health, education, etc.

8. It is still more regrettable and paradoxical to find that 500 years after the colonization of America, which led to a breakdown of the balance between man and nature, the clash of two civilizations and the imposition on the indigenous peoples of a regime of slavery without historical precedent, one Power, using its economic and military strength, should be continuing to try and impose on small and weak peoples its policy of domination, its mode of production and consumption, its market economy, and finally, its conception of democracy, by means of intimidation and blockade, to the detriment of their legitimate aspirations and national sovereignty.

9. At this point the blockade has been strengthened still further by the so-called Torricelli Amendment approved recently by the President of the United States of America. At a time when there is so much talk of an end to war, this measure has been adopted as an instrument of coercion and symbolizes the cold war, intolerance and intolerable interference in the internal affairs of other countries, violating the elementary principles of the Universal Declaration of Human Rights, offending a dignity of a people and disregarding the sovereignty of all Governments which aspire towards and are inspired by a new spirit of international cooperation capable of leading to the peaceful settlement of international disputes.

10. With the application of the Torricelli Amendment, the Government of the United States is affecting supplies to Cuba still more, by forbidding branches or subsidiaries of United States firms established in third countries to have dealings with Cuba and by putting pressure on foreign firms making products with components of United States origin not to sell such goods to Cuba, thus provoking the cancellation of commercial operations between Cuba and firms in third countries, which has caused considerable damage and prejudice to the island's economy. In short, the United States Government is seeking to make its relations with other countries in the world conditional on their letting their economic, commercial and financial ties be governed by the Torricelli Law, which, by reason of its extraterritorial nature, affects the sovereignty of other States.

11. Nevertheless, the most progressive part of world public opinion, and a by no means negligible part, is convinced that the blockade policy simply applied outright under the name of an "embargo", in that it imposes the law of "might is right" in international relations and in that it is an immoral act and an illegal, anti-democratic and anti-social measure, has no legal basis or moral justification in a world where there are no longer opposing blocs and where yesterday's enemies have become today's allies.

12. It is for all these reasons that the non-governmental organizations signing this document, which endorse the declaration contained in document E/CN.4/1992/NGO/12 on the realization of the right to development, urge the Commission on Human Rights to consider at its forty-ninth session the effects and repercussions of the blockade on the human rights of the Cuban people and adopt appropriate resolutions calling upon the Government of the United States of America to put an end to the unjust and prolonged blockade of the Republic of Cuba, to refrain from any military action with implications for the security and integrity of its territory and not to exercise pressure on or take reprisals against countries that maintain trade and cooperation ties of mutual interest with the Government of Cuba.